91-1033

Supreme Court, U.S.
FILED
SEP 25 1991
OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1991

CASCADE DEVELOPMENT CO., INC.,

Petitioner,

vs.

CLAYTON YEUTTER, the Secretary of Agriculture, and the UNITED STATES OF AMERICA.

On Appeal from the U.S. Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI TO THE NINTH CIRCUIT COURT OF APPEALS

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QUESTIONS PRESENTED

1. Did the United States Court of Appeals for the Ninth Circuit err in deciding that the District Court had not entered a final appealable order below?

2. Did the United States Court of Appeals for the Ninth Circuit err in denying the request for a Writ of Mandamus directed to the District Court directing the District Court to lift the stay and proceed with the trial?

3. Did the District Court err in its interpretation of the Alpine Lakes Management Act of 1976 [Pub. Law 94-357, 90 Stat. 905, 906 (1976)]?

4. Did the District Court err in failing to set the matter on for trial on the issue of the value of Cascade's property?

5. Did the District Court err in staying the proceedings pending

compliance with the administrative procedures?

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is unrecorded under Cause No. 91-35248. It is attached hereto as Appendix A and consists of two pages. The opinion of the United States District Court for the Western District of Washington at Seattle in Cause No. C89-980Z is attached hereto as Appendix B, pages 1 through 14.

JURISDICTION

The opinion of the Court of Appeals for the Ninth Circuit was entered on June 17, 1991. There was no petition for rehearing. The jurisdiction of the Supreme Court is invoked under 28 USCA Section 1254(1).

STATUTES INVOLVED

Section 4 of the Alpine Lakes Management Act (Pub. Law 94-357, 90 Stat.

905, 906 (1976), provides in relevant part:

> "Section 4. (a) Within the boundaries of the Wilderness and Intended Wilderness, the Secretary is authorized and directed to acquire with donated or appropriated funds, by gift, exchange, or otherwise, such nonfederal lands, interests, or any other property, in conformance with the provisions of Section 4 of this Act..."

16 USC Section 3210(a) is relevant, in that it requires the Secretary of Agriculture to:

> "Provide such access to nonfederally owned land within the boundaries of the national forest system as the Secretary deems adequate to secure the owner the reasonable and enjoyment thereof..."

28 USC Section 1254 provides in relevant part:

> "Courts of appeals; certiorari...
>
> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following method:
>
> "(1) By Writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree..."

STATEMENT OF THE CASE

Cascade Development, the petitioner herein, prays that a writ of certiorari issue to review the decision of the Ninth Circuit Court of Appeals entered in the above case on June 27, 1991.

This case stems from a dispute between Cascade Development and the Department of Agriculture which dates

back to the 1970's. The most recent series of litigation began after meetings between the Forest Service and Cascade Development which occurred in April of 1983. On April 29, 1983, the Forest Service offered Cascade Development $17,500.00 for its property within the Alpine Lakes Wilderness Area. On October 3, 1985, a Complaint was filed for mandamus and declaratory relief in the U.S. District Court for the Western District of Washington. That Complaint sought a declaration of the value of the property and a writ of mandamus compelling the Secretary of Agriculture to acquire the property.

Based upon the assurances of the Department of Agriculture, the District Court for the Western District dismissed the matter without prejudice. As suggested by the Department of Agricul-

ture the plaintiff then filed a complaint in the U.S. Claims Court on May 30, 1986. That is U.S. Claims Court No. 342-86-L. That case is still pending and has been stayed during the pendency of the current proceeding.

There have been two appellate decision in the Claims Court case by the federal circuit. The first was January 15, 1988, under Cause No. 87-1518. The second is the Federal Circuit's Opinion dated September 26, 1988, under Cause No. 88-1393. In both of those cases, the Federal Circuit reversed the Claims Court dismissal of Cascade's claims.

After the stay of the Claims Court proceedings, the current action was filed in the Western District. It sought declaratory judgment concerning the Secretary's ability to grant a road permit under the terms of the Alaska

the Secretary's ability to grant a road permit under the terms of the Alaska Wilderness Act and the Alpine Lakes Management Act. It also sought declaratory judgment concerning the value of Cascade's property. The District Court dismissed those claims on October 25, 1990, and the appeal to the Ninth Circuit followed.

The Ninth Circuit declined to issue the Writ of Mandamus and declined to review the trial court's decision on the declaratory judgment action concerning the Alpine Lakes Wilderness Act on June 27, 1991.

REASONS FOR GRANTING THE WRIT

The argument here will be brief for the reasons set out more fully in the Motion for Extension of Time.

While it may appear at first blush that the District Court has not entered

Cascade's request for declaratory judgment on all of the declaratory issues raised in the complaint. Cascade's motion for partial summary judgment was not denied because of any unresolved issue of material fact, but was denied as a matter of law. The District Court has effectively rendered a final judgment on virtually everything Cascade sought in this action. Tafoya v. Western Conference of Teamsters, 909 F.2d 344, 347 (9th Cir. 1990); Curlott v. Campbell, 598 F.2d 1175, 1180 (9th Cir. 1979); United States v. State of Washington, 759 F.2d 1353 (9th Cir. 1985); United States v. Adair, 723 F.2d 1394 (9th Cir. 1984); cert. denied 104 S.Ct. 3536 (1984); Laguna v. Hermosa Corporation v. Martin, 643 F.2d 1376 (1981); Planet Insurance v. Mead Reinsurance Corporation, 789 F.2d 668, 670

(9th Cir. 1986).

Simply put, Cascade owns approximately 38 acres of land located in the very heart of the Alpine Lakes area east of Seattle, Washington. Since 1985, Cascade has been attempting to resolve its position with the Secretary of Agriculture. It is Cascade's position that the Secretary has no power to grant Cascade a permit to construct a road through the Alpine Lakes Wilderness Area so as to mine its property. The Secretary has repeatedly told Cascade that he feels the value of its property is minimal. The only offer made prior to this litigation was in the amount of $22,500.00. Cascade feels its property is worth in excess of One Million Dollars. It is obvious that the Secretary and Cascade will not ever agree on the price of the property.

As Cascade interprets the Alpine Lakes Wilderness Act, the Secretary has no power to grant access to Cascade to service a claim with a value of $22,000 or $500,000 for that matter. The Secretary takes the position that he has the power to grant access, but is under no duty to do so. It is Cascade's belief that the Secretary is simply stalling in the hopes of avoiding ever to have to acquire Cascade's property, or grant them a road permit so that they may mine the property and realize its value.

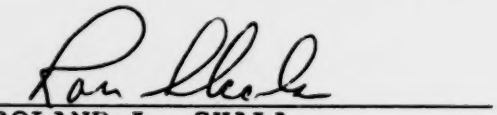
The Secretary has managed to successfully defeat Cascade's efforts to gain access or to gain compensation for the last six years through the United States Claims Court, the Federal Circuit, and twice in the U.S. District Court for the Western District of

Washington, and most recently in the Ninth Circuit Court of Appeals. By failing to rule in Cascade's favor on the interpretation of the Act, and failing to set the matter on for trial on the issue of value, the District Court erred, and the Ninth Circuit failed to reverse the error. At a minimum, a Writ of Mandamus should issue requiring a trial on the issue of value. 28 USC Section 1651; United States v. Alkali Export v. U.S., 65 S.Ct. 1120 (1944); Re Charge of Judicial Misconduct, 593 F.2d 879 (9th Cir. 1979); Schendel v. McGee, 300 Fed. 273 (8th Cir. 1924); L. V. Thomas, 578 F.2d 513 (3rd Cir. 1978).

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,



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Cathy A. Catterson, Clerk
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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CASCADE DEVELOPMENT COMPANY, INC.,	]	No. 91-35248
Plaintiff-Appellant,	]	DC# CV-89-0980-TSZ
vs.	]	Western Washington
CLAYTON K. YEUTTER, et al.	]	at Seattle
Defendant-Appellee.	]	ORDER

Before: D.W. NELSON, NOONAN and FERNANDEZ, Circuit Judges

Appellant has responded to the order to show cause issued on April 22, 1991. After reviewing the parties' papers and the court's records, we have determined that the district court has not entered a final, appealable order in the action below. See United States v. General Dynamics Corp., 828 F.2d 1356, 1360 (9th Cir. 1987) (district court order staying the action generally not

appealable): Sierra On-Line, Inc. v. Phoenix Software, Inc., 793 F.2d 1415, 1421 (9th Cir. 1984) (denial of summary judgment not appealable). Accordingly, we dismiss this appeal for lack of jurisdiction. See 28 U.S.C. Section 1291.

In addition, to the extent appellant petitions this court for a writ of mandamus to compel the district court to lift the stay and proceed with trial, the petition is denied. See Bauman v. United States District Court, 557 F.2d 650 (9th Cir. 1977).

Finally, appellant's request for oral argument is denied.

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ENTERED
ON DOCKET
JUL 2 - 1991
By Deputy MRG

October 25, 1990
At Seattle
Clerk, U.S. District Court
Western District of Washington
By /s/J Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASCADE DEVELOPMENT CO., INC., Plaintiff, vs. CLAYTON YEUTTER, the Secretary of Agriculture, and the UNITED STATES OF AMERICA, Defendants.	NO. C89-980Z ORDER ON ALL PENDING MOTIONS

THIS MATTER comes before the Court upon numerous pretrial motions filed by plaintiff Cascade Development Company, Inc. ("Cascade") and defendants Clayton Yeutter, Secretary of the Department of Agriculture, and the United States. Having reviewed all the materials

submitted, including certain discovery information filed by plaintiff on October 19, 1990, the Court rules as follows: (1) the federal defendants' motion to vacate the trial schedule and to limit issues under review (docket no. 25) is GRANTED IN PART AND DENIED IN PART; (2) plaintiff's motion for partial summary judgment (docket no. 27) is DENIED; (3) plaintiff's motion to shorten time (docket no. 37) is STRICKEN; (4) plaintiff's motion to strike (docket no. 33) is STRICKEN AS MOOT; and (5) plaintiff's motion to extent time (docket no. 35) is GRANTED.

I.

Statement of Facts

Plaintiff Cascade Development Company holds a patented mining claim to a 37-acre parcel completely surrounded by federal land in the Alpine Lakes Wilder-

ness Area. The site is located eight miles from the nearest accessible road. The U.S. Forest Service has made various offers to purchase the land since the wilderness designation in July 1976. Those offers, ranging from $17,500 to $22,500, were rejected by Cascade. That impasse has spawned several lawsuits in addition to the instant one.

In October 1985, Cascade filed an inverse condemnation suit in federal court. Cascade Development Co. v. Block, C85-1990C (W.D. Wash. 1985). Cascade sought compensation for its mining claim in the sum of $150 million. U.S. District Judge John Coughenour dismissed the suit on grounds that Cascade's claim was one for money damages and must therefore be made in the Claims Court.

In June, 1986, Cascade filed a

claim, again for $150 million, with the Claims Court. Cascade Development Co. v. United States, 342-86 (Cl. Ct. 1986). The Claims Court, after being reversed on a statute of limitations ruling, ruled that Cascade was required to exhaust administrative remedies relating to the issuance of a road construction permit before it could pursue its inverse condemnation claim. The court then stayed the suit to permit Cascade to pursue nonmonetary claims in district court.

In June 1989, Cascade filed this suit to compel the Forest Service to exchange its mine property for federal land of equal value. Alternatively, Cascade seeks a declaratory judgment establishing whether the Forest Service can provide reasonable access to the mine site and who should bear the costs

for preparing the access application. In connection with an earlier motion to dismiss, the Forest Service indicated it had ruled out a land exchange in this case. "This leaves only the possibility of `adequate access,' pursuant to 16 U.S.C. Section 1134(a)," and the question of who should pay for the environmental impact statement ("EIS"). Order, entered Jan. 12, 1990, at 4-5. The pending motions pick up where the Court's order left off.

II.

Legal Analysis

1. Forest Service's Motion to Stay

The Forest Service moves to vacate the Court's order setting trial and related dates. The agency represents it is now willing to pay the costs of preparing the EIS necessary to support Cascade's application for a road con-

struction permit, provided Cascade supplies "the necessary preliminary information and mining plan as required by 36 C.F.R. [Section] 251.54 . . . ." Government's Memo, at 3-4. In light of its offer, the Forest Service moves to stay the trial schedule pending an administrative decision on Cascade's permit application. Before reaching that motion, this Court concludes it must first consider Cascade's motion for summary judgment.

2. Cascade's Motion for Summary Judgment

Cascade moves for summary judgment on its declaratory judgment claim regarding the Secretary's duty to acquire private in-holdings by purchase or exchange. The Alpine Lakes Area Management Act of 1976 ("ALAMA"), which

established the Alpine Lakes Wilderness Area, provides in part:

> Sec. 4. (a) Within the boundaries of the wilderness and "Intended Wilderness", the Secretary is authorized and directed to acquire with donated or appropropriated funds, by gift, exchange, or otherwise, such non-Federal lands, interests, or any other property, in conformance with the provisions of section 4 of this Act . . . .

Pub. Law 94-357, 90 Stat. 905, 906 (1976) (emphasis supplied). The act authorizes $57 million for land acquisition. The "Wilderness" area forms the core of the Alpine Lakes Area, and is surrounded by the "Intended Wilderness." The parties agree that Cascade's mining claim is within the Wilderness area.

Cascade contends that under the plain language of the ALAMA the Secretary must either purchase its claim or exchange it for federal land of equivalent value. It seeks a writ of mandamus to that end. The Forest Serv-

ice contends that a third course of action -- that of reasonable access -- is authorized under the statute. For the reasons discussed below, this Court finds both positions are correct to a point.

This Court is not without guidance in interpreting the ALAMA. The statute includes an express statement of legislative intent regarding the timing of private land acquisitions. Congress declared its intention "that acquisition of the `Intended Wilderness' shall be completed no later than three years" after enactment of the ALAMA. 90 Stat. 906. Consistent with this declaration, Congress created a private cause of action in federal district court by private in-holders whose lands are located within the Intended Wilderness

and are not acquired within three years. 90 Stat. 907.[1]

Congress did not impose any corresponding time restrictions on private land acquisitions within the Wilderness area. Additionally, Congress did not create a private cause of action for in-holders whose lands are within the Wilderness area. When viewed against Congress' careful distinction between "Wilderness"

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[1] "[Sec. 4. (c)(1)] At any time after three years from the date of enactment of this Act, an action may be instituted by an owner, all of whose lands within the boundaries of the 'Intended Wilderness' have been managed in such a way so as not to become unsuitable or unmanageable as wilderness . . . , against the United States in the district court for the district in which such lands are located, to require the Secretary to acquire immediately all of said owner's interest in such lands, interests and property and to pay in accordance with this section 4 just compensation for such lands, interest, and property the plaintiff may have which are not yet acquired pursuant to this section 4." 90 Stat. 906-07.

and "Intended Wilderness" areas, this Court concludes that Congress intended that the Secretary discharge his duty to acquire private holdings in the Wilderness area, which includes Cascade's mining claim, without the time restraints set forth in the statute for holdings in the Intended Wilderness area.[2]

Private in-holders such as Cascade are not without remedy. The ALAMA guarantees all private in-holder their right of access:

> [Sec. 4. (c)(3)] Just compensation shall be the fair market value of the lands and interests acquire by and pursuant to this Act, . . . provided [however], [t]hat nothing in this Act shall be

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[2] Section 4(c) also imposes an open-ended obligation on the Secretary to report to Congress on the status of negotiations with private owners to effect exchanges and acquisitions of non-federal property. 90 Stat. 907.

> deemed or construed to deny to owners of non-Federal lands, or to change their rights to access to such lands or to manage the same for any otherwise lawful purpose prior to acquisition thereof by the Secretary.

90 Stat. 907 (emphasis supplied). The antecedent to this right of access is found in the Wilderness Act, 16 U.S.C. Section 1134(a). Reading the two statutes together, it is apparent that Congress intended the adequate access guaranty under the Wilderness Act to apply to privately held in-holdings in the Alpine Lakes Wilderness, at least until such properties are acquired either by purchase or exchange.

In summary, the Court concludes that the ALAMA requires the Forest Service to acquire private in-holdings by purchase or exchange, but grants the agency discretion to decide the timing of acquisitions within the Wilderness area.

Until the claim is acquired, Cascade is entitled to adequate access to its property. To obtain such access, Cascade must comply with the agency's permit procedures. See 36 C.F.R. Section 251.54(e). The Forest Service has agreed to pay the cost of the environmental study to support Cascade's application, provided Cascade supplies the preliminary data. That concession removes the final obstacle to administrative review. Accordingly, the motion for summary judgment is denied, and this suit is stayed pending the outcome of the administrative proceedings.[3]

3. Remaining Motions

Cascade moves to strike most of the

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[3] The Court need not reach the Forest Service's request to strike the jury demand or to limit the Court's review to the administrative record.

Forest Services' reply brief in support of the agency's motion to stay. Cascade contends that the Forest Service improperly raised a new issue concerning how much Cascade's current owners paid to acquire the mining claim. The information objected to is irrelevant to the Court's review of the motions discussed above. Accordingly, the Court strikes as moot Cascade's motion to strike.

The Court also strikes Cascade's motion to shorten time for consideration of its motion to strike. By letter dated July 30, 1990, the Forest Service advised the Court that the parties had agreed to an expedited schedule for hearing the motion to strike. Similarly, the Court grants nunc pro tunc Cascade's unopposed motion to extend time to file a reply brief in support of summary judgment.

IT IS SO ORDERED.

The Clerk of this Court is directed to send uncertified copies of this Order to all counsel of record.

DATED this _25th_ day of October, 1990.

THOMAS S. ZILLY
UNITED STATES DISTRICT JUDGE